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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE NEGRETE,

Defendant and Appellant.

E069467

(Super.Ct.No. BAF1600083)

OPINION

APPEAL from the Superior Court of Riverside County. Jorge C. Hernandez,
Judge. Affirmed as modified with directions.

Kyle D. Smith, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Joy Utomi,
Deputy Attorneys General, for Plaintiff and Respondent.

The trial court sentenced defendant to concurrent prison terms of 16 months after a jury convicted him of two felonies resulting from a short vehicle pursuit in 2015. Defendant argues this court should stay one of these sentences pursuant to Penal Code section 654.¹ The People and this court agree.

FACTS AND PROCEDURE

On December 6, 2015, defendant led two Hemet police officers on a chase after he apparently noticed them following his car in their patrol vehicle. Defendant rolled through a stop sign, drove into opposing traffic to pass other cars on the left, and ran another stop sign. At that point, the police activated the overhead lights and siren on their vehicle. Defendant continued to accelerate at a high rate of speed. He ran another stop sign, surpassed the speed limit, and passed another car by heading into oncoming traffic, causing an oncoming vehicle to pull away to avoid a head-on collision. Defendant slowed down, made a right turn on a red light without stopping, accelerated to about 80 miles an hour, and entered the center divider to pass other vehicles. Defendant eventually pulled over to the side of the road and yielded to the officers.

The chase lasted 1.2 miles. No one was injured and no collision or property damage occurred.

On August 18, 2017, a jury convicted defendant, as charged, of two counts: evading a pursuing police officer with disregard for the safety of persons or property (Veh. Code, § 2800.2, count 1) and evading a pursuing police officer while willfully

¹ Section references are to the Penal Code except where otherwise indicated.

driving his vehicle on a highway against oncoming traffic (Veh. Code, § 2800.4, count 2.) Defendant admitted he had a prison conviction prior. (Pen. Code, § 667.5, subd. (b).)

On November 3, 2017, the court sentenced defendant to the low term of 16 months in prison on count 1, with a concurrent term of 16 months on count 2. The court imposed the one-year enhancement for the prison prior, but struck the punishment for the enhancement.

This appeal followed.

DISCUSSION

Defendant argues the court exceeded its authority when it imposed two separate, if concurrent, punishments for offenses that involved a single intent and indivisible course of conduct—evading the pursuing police officers during the 1.2-mile chase. The People agree.

As relevant, section 654, subdivision (a), provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” “ ‘Section 654 precludes multiple punishments for a single act or indivisible course of conduct.’ ” (*People v. Galvez* (2011) 195 Cal.App.4th 1253, 1262.) When it applies, “the accepted ‘procedure is to sentence defendant for each count and stay execution of sentence on certain of the convictions to which section 654 is applicable.’ [Citations.]” (*People v. Jones* (2012) 54 Cal.4th 350, 353.)

“ ‘Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ [Citation.]” (*People v. Correa* (2012) 54 Cal.4th 331, 336.) However, a defendant may be punished for each offense, “[i]f he [or she] entertained multiple criminal objectives which were independent of and not merely incidental to each other . . . even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.” (*People v. Beamon* (1973) 8 Cal.3d 625, 639.) Additionally, punishment for each offense is not barred by section 654, if the facts support a finding of similar, but consecutively held objectives. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1211-1212.)

Here, defendant was punished for both evading a police officer with disregard for the safety of persons and property (count 1) and evading a police officer while willfully driving his vehicle on a highway against oncoming traffic (count 2). First, the evidence at trial shows that defendant’s single intent was to evade the police officers. As defendant points out, there is no evidence that defendant (1) had contraband in his car, (2) was intoxicated, (3) was driving a stolen vehicle, or (4) was driving away from a crime scene. Thus, the evidence shows defendant’s sole intent was to evade the officers. In addition, the chase was a short one, only 1.2 miles and lasting just a few minutes. Second, the two crimes are based on an indivisible course of conduct. Defendant’s act of evading the police while driving on the wrong side of the road was sufficient to complete

both offenses—evading a police officer both with disregard for the safety of persons and property (count 1) and while driving against oncoming traffic (count 2).

The proper remedy here is to stay the sentence for count 2. (*People v. Jones, supra*, 54 Cal.4th at p. 353.)

DISPOSITION

The concurrent sentence for count 2 is stayed pursuant to section 654. The trial court is directed to prepare an amended abstract of judgment and minute order of the sentencing hearing staying the sentence on count 2 and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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RAMIREZ

P. J.

We concur:

FIELDS

J.

MENETREZ

J.